Sukumaran v. Workers' Compensation Appeal Board

2005 | Cited 0 times | Supreme Court of Pennsylvania | June 27, 2005

Submitted: March 11, 2005

BEFORE: HONORABLE ROCHELLE S. FRIEDMAN, Judge, HONORABLE MARY HANNAH LEAVITT, Judge, HONORABLE JIM FLAHERTY, Senior Judge.

OPINION NOT REPORTED

MEMORANDUM OPINION

Sadasivian Sukumaran (Claimant) petitions for review of an adjudication of the Workers' Compensation Appeal Board (Board) that affirmed a supersedeas that had been granted by the Workers' Compensation Judge (WCJ) in the course of a termination proceeding. The supersedeas did not affect Claimant's medical benefits, only his disability benefits. Claimant asserts that the WCJ granted the supersedeas sua sponte and that a WCJ lacks such authority.

On March 12, 1995, Claimant, a bus mechanic with SEPTA (Employer), sustained an injury to his low back and right shoulder in the course of changing a tire. On February 9, 1996, pursuant to a stipulation with Employer, Claimant was awarded disability and medical benefits.

On April 25, 2002, Employer requested a utilization review of Claimant's chiropractic treatments by Robert Cavoto, D.C., from March 18, 2002, forward. The report issued by the Utilization Review Organization (URO) found Dr. Cavoto's treatment not to be reasonable or necessary after May 17, 2002. Claimant petitioned for review of the URO's determination.

On October 1, 2002, Employer petitioned to terminate Claimant's benefits, asserting that Claimant had fully recovered from his work injuries as of September 4, 2002. In connection with this petition, Employer requested a supersedeas. The petitions of Employer and Claimant were consolidated, and the WCJ began to take evidence. On November 25, 2002, after the second of four hearings, the WCJ denied Employer's request for a supersedeas, directing Employer to continue "to pay Claimant's weekly benefits and reasonable medical and necessary medical expenses." WCJ Interlocutory Order of November 25, 2002.

On December 4, 2002, Employer requested a utilization review of Claimant's treatment by Bruce Grossinger, D.O., a neurologist, from October 25, 2002, and thereafter. The report from the URO found Dr. Grossinger's treatments, consisting of needle electromyography/nerve conduction studies,

to be reasonable and necessary. Employer petitioned for review of the determination of the URO, which was consolidated with the first two petitions of Claimant and Employer.

At the hearing on February 19, 2003, Employer submitted the deposition testimony of its expert, Herbert Stein, M.D., a board-certified orthopedist, and Claimant submitted the deposition testimony of his chiropractor, Dr. Cavoto. Dr. Stein opined that Claimant was fully recovered from his work injury, and Dr. Cavoto's opinion was directly contrary. No stenographic record was made of the hearing.[1] On February 20, 2003, the WCJ granted Employer a supersedeas but directed Employer to "continue to pay all reasonable, relevant and necessary medical expenses." WCJ Interlocutory Order of February 20, 2003. Claimant appealed the supersedeas, but the appeal of this interlocutory order was quashed.

On March 2, 2004, the WCJ decided all outstanding petitions. In granting Employer's termination petition, the WCJ credited the medical opinion of Dr. Stein over that of Dr. Cavoto because it was consistent with Claimant's diagnostic study.[2] The WCJ also granted Employer's utilization review petition, finding the URO's report on Dr. Grossinger's treatment not reliable because it did not include a review of many of Claimant's medical records. The WCJ denied Claimant's utilization review petition, finding the URO's report of Dr. Cavoto's treatment to be thorough, detailed and reliable. Claimant appealed to the Board.

Before the Board, Claimant asserted that the WCJ's decision to terminate benefits was not supported by substantial evidence. Further, he argued that the WCJ should not have granted the February 20, 2003, supersedeas because Employer had not requested reconsideration of the WCJ's decision of November 25, 2002, denying a supersedeas.[3] Claimant alleged that the WCJ granted the supersedeas to punish the Claimant when he did not appear at a deposition, which was an abuse of her authority.

The Board concluded that substantial evidence supported the WCJ's decision to terminate Claimant's compensation benefits as of September 4, 2002. With respect to Claimant's challenge to the supersedeas, the Board noted that under the regulation at 34 Pa. Code §131.41, a decision to grant or deny a supersedeas may be reviewed and modified at any time. There was no record of the February 19, 2003, hearing at which the supersedeas was granted, making it impossible to determine whether it was granted sua sponte. Nevertheless, it was clear that Claimant had notice and that a hearing had been held as required by 34 Pa. Code §131.41. In any case, the Board found that any error by the WCJ in this regard was harmless because his benefits were terminated on September 4, 2002, well in advance of the grant of the supersedeas. Claimant then petitioned for this Court's review.

On appeal,[4] the sole issue raised by Claimant is whether the Board erred in affirming the WCJ's grant of supersedeas, suspending Claimant's disability benefits for the period from February 19, 2003, through March 2, 2004, the date of the WCJ's decision to terminate benefits. Claimant seeks reinstatement of those benefits suspended by the supersedeas order. Claimant argues that the WCJ had no authority to modify her earlier denial of a supersedeas because Employer did not request

reconsideration. Further, Claimant contends that the validity of the supersedeas order must be evaluated independently from the merits of Employer's termination petition. Stated otherwise, the fact that Employer was ultimately successful in its termination petition did not render the supersedeas order valid.

Employer counters that Claimant's contention that the WCJ acted sua sponte to modify its first supersedeas order is not supported by the record. Claimant did not request a stenographic record of the hearings held on September 11, 2002, November 18, 2002, and February 20, 2003. Accordingly, Claimant cannot support the premise to his argument, i.e., that the WCJ acted sua sponte. Further, it is obvious from the text of the WCJ's February 20, 2003, supersedeas order that Claimant had notice of the supersedeas hearing. A supersedeas order granted after notice and a hearing satisfies due process, in accordance with our holding in Penn Window and Office Cleaning Co. v. Workmen's Compensation Appeal Board (Pearsall), 550 A.2d 610 (Pa. Cmwlth. 1988). We agree.

The certified record provided to this Court does not contain a transcript of the February 19, 2003, hearing that might provide support for the facts as they are alleged by Claimant. "It is beyond cavil that an appellate court is limited to considering only those facts which have been duly certified in the record on appeal." Spink v. Spink, 619 A.2d 277, 280 n.1 (Pa. Super. 1992). In the absence of a transcript, we may not speculate about what happened at the February 19, 2003, hearing, and we are bound by the WCJ's interlocutory order that recites that a hearing was held on Employer's requested supersedeas. This accords with the rules of practice before a WCJ, which provide:

If a supersedeas has been granted or denied in whole or in part, the judge may, upon request and after hearing, review and modify the grant or denial as warranted.

34 Pa. Code §131.41(b) (emphasis added). Whether or how Employer made a request for reconsideration is impossible to determine. Equally, it impossible to ascertain whether the WCJ acted on her initiative. In the absence of evidence in the record, Claimant's challenge to the supersedeas is waived.[5]

Accordingly, the decision of the Board is affirmed.

AND NOW, this 27th day of June, 2005, the adjudication of the Workers' Compensation Appeal Board dated November 15, 2004, in the above-captioned matter is hereby affirmed.

MARY HANNAH LEAVITT, Judge

1. Four hearings were held before the WCJ: September 11, 2002; November 18, 2002; February 19, 2003; and May 8, 2003. No transcript was made of the first three hearings. On May 8, 2003, Claimant testified live before the WCJ; a transcript of that hearing is included in the Certified Record.

2. Claimant's testimony was not credited. The WCJ found that Claimant was not truthful; he did not tell Dr. Cavoto that he had been in an automobile accident in 2001, before he began treating with Dr. Cavoto. Further, Claimant admitted that he was able to work but took no steps to look for work.

3. Because no record was made of the hearing on February 19, 2003, none of the facts alleged in Claimant's appeal appear of record. There is no evidence as to whether Employer made a request for reconsideration of the request for supersedeas, or that there was any evidence that Claimant did not attend a scheduled deposition or the reason why he did not attend. The only hearing transcript in the record, for the hearing held on May 8, 2003, includes a reference by Claimant's attorney to the February 19, 2003, hearing and the fact that no evidence of the hearing was placed on the record. Hearing Transcript, May 8, 2003, at 32-34; C.R.

4. Our scope of review is limited to determining whether constitutional rights were violated, whether an error of law was committed, and whether necessary findings of fact are supported by substantial evidence. McNulty v. Workers' Compensation Appeal Board (McNulty Tool & Die), 804 A.2d 1260 (Pa. Cmwlth. 2002).

5. Claimant appears not to have filed a motion with the WCJ to seek reconsideration of the grant of the supersedeas. Instead, he sought relief from the Board.